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May 28, 2008

Via Hand Delivery

Honorable Richard M. Berman
United States District Judge, SDNY
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

MEMO ENDORSED

Re: Mark Kapiti v. Raymond W. Kelly, et al., 07 Civ. 3782 (RMB) (KNF)

Your Honor:

I am an Assistant Corporation Counsel in the Special Federal Litigation Division of the New York City Law Department assigned to the defense of the above-referenced matter on behalf of defendants City of New York, Police Commissioner Raymond W. Kelly, and the Property Clerk of the New York City Police Department ("City defendants"). In that regard, City defendants write to respectfully request that the Court extend discovery until June 20, 2008 for the sole purpose of taking the deposition of a representative from American Honda Finance Corporation ("American Honda"). American Honda and plaintiff Mark Kapiti consent to this request.

As background, by letter, dated May 23, 2008, City defendants requested that the Honorable Kevin Nathaniel Fox compel third-party defendant American Honda to produce a representative from American Honda for a deposition pursuant to City defendants' notice of deposition, dated May 20, 2008. In the alternative, City defendants requested that (1) American Honda be compelled to make a representative from American Honda available in the month of June; and (2) that the Court extend discovery for the sole purpose of taking that deposition. By Order, yesterday, Judge Fox ordered that American Honda must produce a representative for a deposition by May 30, 2008, the date that discovery is scheduled to close in the instant action. American Honda agreed today to produce a representative for a deposition on May 30, 2008. However, counsel for City defendants has a court conference scheduled before the Honorable Lewis A. Kaplan in the Southern District of New York on May 30, 2008 at 10:00 a.m. in the matter of Lloyd Moore v. City of New York, et al., 08 Civ. 3487 (LAK). Furthermore, counsel for City defendants has another deposition scheduled for May 30, 2008, which will likely last for

the remainder of the day in the matter of Tyree Davis v. City of New York, et al., 07 Civ. 2142 (MGC). Moreover, counsel for plaintiff has a court-scheduled conference on May 30, 2008 at 11:00 a.m. Should the Court grant this request, the parties have all agreed to conduct the deposition of a representative from American Honda on June 20, 2008. Finally, I note that the parties have been working diligently to complete discovery within the guidelines set by the Court. Depositions in this case have already been taken and more are scheduled to be completed this week.

Accordingly, City defendants write to respectfully request that the Court extend discovery for the sole purpose of taking the deposition of American Honda Finance Corporation until June 20, 2008.

I thank the Court for its consideration herein.

Respectfully submitted,

Philip S. Frank

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cc: **VIA FACSIMILE (212) 805-6712**
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Application respectfully
denied. See Judge
Fox' Order dated 5/27/08.

SO ORDERED:

Date: 5/29/08

Richard M. Berman
Richard M. Berman, U.S.D.J.